Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

THE TOKIO MARINE & FIRE INSURANCE COMPANY, LTD., A CORPORATION, PETITIONER

v.

YUMI ITO, AN INDIVIDUAL ON BEHALF OF HERSELF AND ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA (FOR THE BENEFIT OF THE INTERNAL REVENUE SERVICE AND THE CALIFORNIA FRANCHISE TAX BOARD)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Ninth Circuit's erroneous decision to reverse the district court's decision to dismiss an action, on the ground of forum non conveniens, by a United States citizen against a Japanese insurer for its alleged bad faith handling of an insurance claim arising from an automobile accident that occurred in Japan, which claim arose under a policy of insurance issued in Japan by a Japanese insurer, to a Japanese national, insuring a risk (automobile liability) in Japan, conflicts with decisions of other circuits with respect to the standard of proof, violates public policy, and ignores concerns of comity?

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OPINIONS BELOW

The opinion of the Court of Appeals is unpublished and is reprinted in the Appendix to the Petition ("App.") at 1a-4a. The District Court's opinion is unpublished and is reprinted at App. 5a-12a.

JURISDICTION

The Ninth Circuit decision of the Court of Appeals was entered on January 25, 2006. The decision of the Court of Appeals denying Tokio Marine's petition for Ninth Circuit rehearing was entered on March 16, 2006. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

(see appendix)

STATEMENT

The Ninth Circuit failed to accord appropriate deference to the district court's decision. Though it acknowledged the abuse of discretion standard, it nonetheless substituted its own judgment for that of the District Court, which it may not do. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257, 102 S.Ct. 252, 265, 70 L.Ed.2d 419 (1981). More importantly, however, the Ninth Circuit's analysis conflicts with those of other circuits, since it disregarded access to evidence as a significant private interest factor. The decision creates public policy concerns, since the court of appeals imposed an incorrect standard of proof. The Ninth Circuit ignored considerations of comity in erroneously concluding that California has an interest in an insurance claim under a policy issued by a Japanese insurer, to a Japanese citizen

Petitioner Tokio Marine intervened in respondent's lawsuit and participated in all aspects of the case. (*Id.* at 9a) Tokio Marine participated in settlement discussions and was included in the Articles of Settlement. (*Id.*)

In October 2003, Respondent sued Tokio Marine in California, asserting claims for reach of contract, breach of the implied covenant of **good** faith and fair dealing, fraud, novation, bad faith, and injunctive and restitutionary relief. (*Id.* at 8a) She filed the complaint in state court, but Tokio Marine removed the action to the United States District Court for the Central District of California on the basis of diversity jurisdiction. 28 U.S.C. §§ 1441 and 1332(a)(2). (*Id.*)

The vast majority of the witnesses in this action are located in Japan. (*Id.* at p. 12a). Tokio Marine disclosed thirty-three witnesses who are located in Japan and speak Japanese. (*Id.* at 13a). Respondent identified only herself, her son and two treating physicians as witnesses located in the United Stated. (*Id.*)

The bulk of the documents, namely documents relating to the 1995 car accident, respondent's post-accident hospitalization, the insurance policy, Tokio Marine's claim file, and the litigation and settlement in *Ito v. Onizuka*, are located in Japan and written in Japanese. (*Id.* at 13a) Only plaintiff's medical records for treatment received in the United States and her financial records are located in the United States. (*Id.*)

B. Proceedings Below

Tokio Marine moved to dismiss on the basis of forum non conveniens. The District Court dismissed the

traced the errors to the district court's incorrect analysis of the nature of the claims before it.

The court of appeals' evaluation of the private interest factors reflects that it disregarded the element of access to evidence as a private interest factor and in doing so, its opinion is in conflict with decisions in other circuits.

The court of appeals reached a different conclusion from the district court because it characterized the claims differently. The court of appeals regarded the dispute as simply one between a citizen of the forum state and a foreign insurance company. The complaint does set forth claims which are typically asserted against an insurance company, and thus it is perhaps understandable how the court of appeals reached its conclusion. Because the court of appeals focused solely upon the alleged promise to pay benefits to the plaintiff in the United States, and found the circumstances of the underlying action to be irrelevant, it concluded that greater weight should have been placed upon plaintiff's citizenship, and thus the court of appeals rejected the manner in which the district court weighed the parties' interests.

In contrast to the appellate court, the district court understood that plaintiff's current claims are inseparable from events in Japan. The injuries which gave rise to the claims asserted now by plaintiff were caused by an automobile accident in Japan. After plaintiff was injured, Tokio Marine paid for her medical treatment in Japan pursuant to a Japanese insurance policy issued to the driver of the automobile in which plaintiff was a passenger at the time of the accident. Since plaintiff possessed only a temporary visa, she was unable to receive further treatment in Japan without interruption.

to a plaintiff's choice of forum, especially when the plaintiff is a citizen and resident of the United States. However, the district court concluded that plaintiff's interest in selecting California as the forum was outweighed by the other factors, such as the location of witnesses and evidence. The district court's conclusion is supported by the record and case law. *See Howe v. Goldcorp Investments, Ltd.*, 946 F.2d 944, 950-951(1st Cir. 1991), *cert. denied*, 502 U.S. 1095, 112 S.Ct. 1172, 117 L. Ed. 2d 418 (1992) (affirming dismissal where most of background facts occurred in Canada and thus most of evidence and most of witnesses were in Canada); *Scottish Air Int'l, Inc. v. British Caledonian Group plc*, 81 F.3d 1224, 1233-34 (2d Cir. 1996) (affirming dismissal where all potential witnesses and most, if not all, of relevant documents were located in Great Britain); *Alcoa Steamship Co. v. M/V Nordic Regent*, 654 F.2d 147, 149 (2d Cir. 1980) (en banc), *cert. denied, motion granted*, 449 U.S. 890, 101 S. Ct. 248, 66 L. Ed. 2d 116 (1980), *reh'g denied*, 449 U.S. 1103, 101 S. Ct. 902, 66 L. Ed. 2d 831 (1981), *reh'g denied*, 450 U.S. 1050, 101 S. Ct. 1772, 68 L. Ed. 2d 247 (1981) (affirming dismissal of admiralty action where accident and damage occurred in Trinidad, repairs would take place in Trinidad, and witnesses, other than experts and ship's crew, were in Trinidad); *Calavo Growers of Cal. v. Generali Belgium*, 632 F.2d 963, 965-66 (2d Cir. 1980), *cert. denied*, 449 U.S. 1084, 101 S. Ct. 871, 66 L. Ed. 2d 809 (1981), *reh'g denied*, 451 U.S. 934, 101 S. Ct. 2012, 68 L. Ed. 2d 321 (1981) (affirming dismissal of breach of contract and fraud action where documents were located in Belgium and suit involved residents of Belgium, where contract was negotiated and allegedly breached in Belgium, and case implicated customs of insurance industry in Belgium and Europe at large); *compare DiRienzo v. Philip Servs. Corp.*, 294 F.3d 21 (2d

(App. 14a) More importantly, however, the burden of proof imposed by the court of appeals raises substantial public policy concerns. This Court has rejected the standard of requiring actual proof from a moving party. A moving party is not required to submit affidavits which identify the testimony that witnesses will provide at trial. Such a high level of detail is unnecessary As this Court explained in *Piper Aircraft*:

> The Court of Appeals found that the problems of proof could not be given any weight because Piper and Hartzell failed to describe with specificity the evidence they would not be able to obtain if trial were held in the United States. It suggested that defendants seeking *forum non conveniens* dismissal must submit affidavits identifying the witnesses they would call and the testimony these witnesses would provide if the trial were held in the alternative forum. Such detail is not necessary. [Footnote omitted.]

Piper Aircraft v. Reyno, 454 U.S. at 258, 102 S.Ct. at 267.

The Ninth Circuit relied upon *Miskow v. Boeing Co.*, 664 F.2d, 205, 208 (9th Cir. 1981), *cert. denied*, 455 U.S. 1020, 102 S. Ct. 1717, 72 L. Ed. 2d 138 (1982), for its interpretation of the "clear showing" standard. The *Miskow* decision was decided before *Piper Aircraft* and thus does not take into account this Court's analysis regarding the level of proof necessary to obtain dismissal. In addition, the *Miskow* decision provides no guidance, since, without providing its reasoning, the court of appeals simply states its conclusion that the district court had abused its discretion.

> which the activity takes place within the territory [of the regulating state]," *id.*, § 403(2)(a); "the connections, such as nationality, residence, or economic activity, between the regulating state and the person principally responsible for the activity to be regulated," *id.*, § 403(2)(b); "the character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted," *id.*, § 403(2)(c); "the extent to which another state may have an interest in regulating the activity," *id.*, § 403(2)(g); and "the likelihood of conflict with regulation by another state," *id.*, § 403(2)(h). *Hartford Fire Ins. Co. v. Cal.*, 509 U.S. 764, 818-819, 113 S.Ct. 2891, 2921, 125 L.Ed. 612 (1993) (Scalia dissenting).

The court of appeals disregarded concerns of comity. It overemphasized the extent of California's interest and, in addition, devalued the nature of Japan's interest. The court of appeals disagreed with the district court because it did not acknowledge the significance of events in Japan.

Respondent's claim also attacks the conduct and position of petitioner in the litigation in Japan. If the prior lawsuit had been litigated in the United States and in California, this attack would raise constitutional issues relating to Tokio Marine's right to petition under the United States Constitution - and that of California. Inasmuch as it addresses conduct in litigation in Japan, it raises substantial issues of comity and conflict of laws, public interest factors under the forum non conveniens

licensed, to transact "any class of insurance business *in this state* . . .." Cal.Ins.Code §700(a) (Emphasis added); *see People v. United National Life Ins. Co.*, 66 Cal.2d 577, 427 P.2d 199, 58 Cal.Rptr. 599 (1967), *appeal dismissed by, United Nat'l Life Ins. Co. v. California*, 389 U.S. 330, 88 S. Ct. 506, 19 L. Ed. 2d 562(1967) (holding that California can constitutionally regulate insurance transactions of out-of-state insurance companies which solicit and negotiate life insurance by mail with California residents, even though the insurers have no agents in California). The extent of California's interest is to regulate the business of insurance in California, not in other states and certainly not in other countries.

Insurance in Japan is regulated under the Insurance Business Law (Law No. 105 of June 7, 1995), Cabinet Order for Enforcement of Insurance Business Law, Ordinance for Enforcement of Insurance Business Law and Rulings of the Ministry of Finance, which are now the Guidelines of the Financial Supervisory Agency. Japan thus has an interest in regulating insurers on a comprehensive basis, just as California regulates insurers with respect to policies issued in California. *See Denham v. Farmers Ins. Co.*, 213 Cal. App. 3d 1061, 1066, 262 Cal. Rptr. 146 (1989).

The Ninth Circuit noted in *Fields v. Sedgwick* that "England surely has a strong interest in resolving a claim by a British subject against English defendants arising from an English insurance policy. We find that adjudicating this dispute in California rather than England would be unreasonable." *Id.*, 796 F.2d at 303. Likewise, here, Japan has a strong interest is resolving a claim by a frequent U.S. business visitor to Japan, against a Japanese defendant, arising from an accident occurring

Campbell v. State Farm Mut. Auto. Ins. Co., 2004 UT 34, 98 P.3d 409, 498 Utah Adv. 23 (2004), *cert. denied, State Farm Mut. Auto. Ins. Co. v. Campbell*, 543 U.S. 874, 125 S. Ct. 114, 160 L. Ed. 2d 123 (2004).

The Supreme Court also noted that principles of federalism are also implicated in this analysis. *State Farm*, 538 U.S. at 421-22, 123 S.Ct. at 1522-23; *see also White v. Ford Motor Co.*, 312 F.3d 998, 1013-14 (9th Cir. 2002), *amended, reh'g denied*, 335 F.3d 833 (9th Cir. 2003) (Because no single state can impose its own policy choice on neighboring states, a state may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other states) (*quoting BMW of North America, Inc. v. Gore*, 517 U.S. 559, 571-72, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996)). This is equally if not more true in the case of conduct in another nation.

2. The District Court Correctly Found That Japan's Interest In This Litigation Outweighs California's Interest

Notwithstanding the fact that plaintiff purports to assert claims arising under California law, the district court recognized, correctly, that California's interest in this litigation is slight in comparison to Japan's. In its analysis of the public interest factors, the district court properly considered the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action in order to avoid unnecessary problems in conflict of laws or in the application of foreign law. *Piper Aircraft v. Reyno*, 454 U.S. at 241, n. 6, 102

Thus, it was correct for the district court to exercise its discretion in favor of dismissal. The district court thereby avoided potential problems in conflict of law, which would arise from the application of California law to a Japanese insurance policy and to Japanese insurance claims handling practice (which involves considerations of both determination of tort liability under Japanese law and application of a Japanese insurance policy).

Each system, California and Japan, is a relatively integral legal whole. Insurance is heavily regulated in both jurisdictions. It is unreasonable to assume that California's interest takes precedence over Japan's. In exercising its discretion in favor of dismissal, the district court paid due regard to concerns of comity. *See Ford v. Brown*, 319 F.3d 1302, 1309 (district court overlooked important comity concerns in refusing to dismiss). The Ninth Circuit, in contrast, unreasonably ignored Japan's interest.

The Ninth Circuit premised its holding in part on a perceived California interest in what is, fundamentally, a Japanese insurance claim. In doing so, it was substituting its own judgment for that of the District Court. And it was ignoring substantive concerns of conflict of laws and comity, which supported the District Court's exercise of discretion in dismissing the case for forum non conveniens.

(any footnotes trail end of each document)

No. 04-55145

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

YUMI ITO, an individual on behalf of herself and on behalf of the People of the State of California (for the benefit of the Internal Revenue Service and the California Franchise Tax Board),
Plaintiff - Appellant,

v.

TOKIO MARINE & FIRE INSURANCE COMPANY, LTD., a corporation,
Defendant - Appellee.

November 17, 2005, Argued and Submitted, Pasadena, California

January 25, 2006, Filed

NOTICE: RULES OF THE NINTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

COUNSEL: For YUMI ITO, an individual on behalf of herself and on behalf of the People of the State of California (for the benefit of the Internal Revenue Service and the California Franchise Tax Board), Plaintiff - Appellant: Robert A. Miller, Esq, La Crescenta, CA.; Samuel P. Britton, Esq., Costa Mesa,

arises from Tokio's breach of its 1996 agreement to pay for medical costs plaintiff incurred in the United States at Tokio's suggestion. Tokio's stated rationale for stopping medical payments was lack of information from Ito's United States physicians, an issue that does not require relitigation of the injuries sustained in the car accident.

Second, the district court improperly apportioned the burden of proof between the parties. Tokio, the party moving to dismiss for *forum non conveniens*, bore the burden of making a "clear showing" of facts that either "(1) establish such oppression and vexation of a defendant as to be out of proportion to the plaintiff's convenience, which may be shown to be slight or nonexistent, or (2) make trial in the chosen forum inappropriate because of considerations affecting the court's own administrative and legal problems." *Miskow v. Boeing Co.*, 664 F.2d 205, 208 (9th Cir. 1981) (internal quotation marks omitted). Without such a showing, the district court cannot assume that the movant's assertions establish inconvenience, as the district court did here.

2. Private Interest Factors. Contrary to established Supreme Court authority, the district court failed to give any deference to Ito's United States citizenship and choice of home forum. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255, 102 S. Ct. 252, 70 L. Ed. 2d 419 (1981) ("[A] plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the home forum."). Although the district court acknowledged that courts give substantial deference to a plaintiff's choice of forum, and included residence of the parties in its enumeration of private interest

3. Public Interest Factors. The district court improperly discounted the interests of California and the United States in the litigation. Ito seeks damages for breach of contract and for the tort of breach of the covenant of good faith and fair dealing. The injury caused by the alleged breaches were to a California state resident in California. We have recognized consistently that "California has a strong interest in providing a forum for its residents and citizens who are tortiously injured." *Dole Food Co. v. Watts*, 303 F.3d 1104, 1115-16; *see also Fields v. Sedgwick Associated Risks, Ltd.*, 796 F.2d 299, 302 (9th Cir. 1986) ("California has a strong interest in providing an effective means of redress for its residents when their insurers refuse to pay claims.") (internal quotation marks omitted). While Japan may have some interest in protecting its corporate insurers, that interest does not outweigh California's interest in protecting its citizens and ensuring that they are compensated for injuries occurring in California.

The district court also improperly analyzed the issue of court congestion by commenting on congestion in the Central District without considering whether Japan provided a speedier forum. In considering the administrative difficulties flowing from court congestion, "the real issue is not whether a dismissal will reduce a court's congestion but whether a trial may be speedier in another court because of its less crowded docket." *Gates Learjet*, 743 F.2d at 1337. The consideration of docket congestion in balancing the public interest factors is intended to weigh relative convenience; *forum non conveniens* "should not be used as a solution to court congestion." *Id.*

CV 03-6835-JFW (JTLx)
UNITED STATES DISTRICT COURT CENTRAL. DISTRICT OF CALIFORNIA

YUMI ITO, etc., et al.

-v-

TOKIO MARINE & FIRE INSURANCE COMPANY, LTD. etc.

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR FORUM NON CONVENIENS (filed October 20, 2003)

On October 20, 2003, Defendant The Tokio Marine & Fire Insurance Co., Ltd. ("Defendant") filed a Motion to Dismiss for Forum Non Conveniens. On December 2, 2003, Plaintiff Yumi Ito ("Plaintiff") filed her Opposition. On December 8, 2003, Defendant filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this mater is appropriate for decision without oral argument. The hearing calendared for December 17, 2003, is hereby vacated, and the matter taken off calendar. After considering the moving, opposing, and reply papers and the arguments therein, the Court rules as follows:

I. Facts and Procedural Background

On August 18, 2003, Plaintiff, a naturalized American

future costs of her treatment in California. Based on this agreement, Defendant would no longer be required to pay for trips by Plaintiff from Japan to the United States to renew her visa. Plaintiff was treated in the United States and was reimbursed $328,578.84 by Defendant for the treatment she received between July 1996 and August 1997. On August 21,1997, Defendant sent Plaintiff a letter stating that a question existed as to whether the treatment Plaintiff was then receiving was related to the injuries she suffered in the 1995 car accident. The letter also stated that Defendant required more detailed information about the treatment from the physician in charge before Defendant would pay for any additional medical treatment. Plaintiff contends her requests for further explanation of why payment had been discontinued were met with excuses, including the suggestion that her treating physicians were unqualified, and assurance that payments would resume once the problems were resolved.

On January 13, 2000, Plaintiff sued Messrs. Onizuka and Suzuki, the driver of the other car involved in the 1995 accident, in Tokyo District Court. Defendant, as one of Mr. Onizuka's insurers, intervened in the suit and participated in all aspects of the case. This case, Yumi Ito v. Kunisuke Onizuka (Case No. 496(wa), 2000), was settled on February 13, 2003 and Defendant participated in the settlement discussions with the Court and was included in the Articles of Settlement. Declaration of Hiroshi Nakane, Esq., Exhs. D & F.

II. Standard

A party moving to dismiss an action on the grounds of forum non conveniens must demonstrate: (1) the

process in Japan.[1] Moreover, despite the lack of jury trials and different discovery procedures in Japan, federal courts have consistently found that Japan is an adequate alternative forum to litigation in the United States. Lockman, 930 F.2d at 768. Plaintiff argues that this is one of the "rare circumstances" where, despite Defendant being amenable to process in Japan, Japan is an inadequate alternative forum because Japan does not recognize a cause of action for insurance bad faith.[2] See, e.g., Lueck v. Sundstrand Corp., 236 F.3d 1137, 1143 (9th Cir. 2001) (only in rare circumstances is remedy provided by alternative forum so clearly inadequate or unsatisfactory that it is no remedy at all).

However, Japan is an adequate alternative forum if some remedy for Plaintiff exists, even if Japan does not offer the same array of remedies or the same magnitude of potential recovery available in this Court. Creative Technology, Ltd. v. Aztech System PTE, Ltd., 61 F.3d 696, 743 (9th Cir. 1995) (because Singapore court "capable of offering [plaintiff] an adequate monetary or injunctive remedy," it was an adequate alternative forum even though territorial limits of Singapore Copyright Act prevented redress far infringement in United States); Lockman, 930 F.2d at 769 (possible unavailability of RICO and Lanham Act claims in Japanese court did not make it an inadequate forum because plaintiff could recover under tort and contract theories). Japan recognizes causes of action for contract and tort theories. Lockman, 930 F.2d at 769. In this case, the majority of Plaintiff's claims arise under contract (breach of contract, novation) and tort (fraud, breach of the implied covenant of good faith and fair dealing) theories.[3] Because some remedy for Plaintiff exists in Japan, Japan is an adequate alternative

the thirty-three witnesses listed by Defendant are located in Japan and speak Japanese. In contrast, Plaintiff has only herself, her son, and two treating physicians identified as witnesses located in the United States.[5] Given the number of witnesses located in Japan versus the witnesses located in the United States and the greater need for translation services if the litigation remains in this Court, it obviously will be less expensive to obtain attendance of witnesses and translation services if the lawsuit is litigated in Japan. Fluoroware, Inc. v. Dainichi Shoji K.K., 999 F. Supp. 1265, 1273 (D.Minn. 1991) (dismissing for forum non conveniens where many of witnesses were in Japan and it would be impossible or very expensive to obtain their attendance in Minnesota). Moreover, while some of Defendant's witnesses are employees and presumably would agree to come to the United States to testify if the litigation remained in this Court, many key witnesses, including the drivers of the cars involved in the 1995 accident and Plaintiff's physicians in Japan, are not employed by Defendant and Defendant would be unable to secure their testimony if the case remained in this Court. This factor also favors dismissing this case. Id.

Moreover, the bulk of the documents - all of the documents related to the 1995 car accident, Plaintiff's post-accident hospitalization, the insurance policy issued by Defendant, the Defendant's claim file, and the litigation and settlement in Ito v. Onizuka - are located in Japan and written in Japanese. Plaintiff does have some documents - her medical records for treatment she received in the United States and her financial records - located in the United States and written in English. Because the majority of documents are located in Japan

arising out of parties' contractual relationship in England, most of witnesses and physical and documentary evidence located in England and, therefore, private interests favored dismissal); Blanco v. Banco Industrial de Venezuela, 997 F.2d 974, 983-84 (2d Cir. 1993) (in contract dispute arising out of project in Venezuela, private interest factors strongly favor dismissal when most witnesses and physical and documentary evidence located in foreign forum).

2. The Public Interest Factors.

Courts also balance public interest factors to determine if they weigh in favor of dismissal. These factors include (1) administrative difficulties flowing from court congestion;[6] (2) local interest of lawsuit; (3) the court's familiarity with governing law; (4) burden on local courts and juries; and (5) the costs of resolving a dispute unrelated to this forum. Lueck, 236 F.3d at 1147 (citing Piper Aircraft, 454 U.S. at 259-61, and Gulf Oil, 330 U.S. at 508-09). These factors also weigh in favor of dismissal.

"Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation." Baumgart v. Fairchild Aircraft Corp., 981 F.2d 824, 828 (5th Cir.), cert. denied 508 U.S. 973 (1993) (upholding determination that Germany had greater interest in ensuring that its citizens were compensated for injuries arising out of plane crash in Germany than did Texas in potential liability of Texas manufacturers for allegedly defective product manufactured in Texas). Moreover, all localities have an interest in having localized controversies decided in their own forum. Howe v. Goldcorp Investments,

States' interest outside of the American plaintiff. Therefore, it would be unfair to burden this Court and its jurors with the costs of litigating a case that is primarily of interest to Japan. Creative Technology, 61 F.3d at 704 ("the United States' interest . . . and the relation of the jury community to this controversy are extremely attenuated" despite presence of parties' American subsidiaries that distribute contested product in the United States).

When a diversity case is governed by foreign law, courts frequently dismiss the case and allow it to proceed in the foreign form. See Piper Aircraft, 454 U.S. at 260 ("[T]he need to apply foreign law point[s] towards dismissal"). In this diversity case, while the Court need not, and does not, decide the choice-of-law issue, it is clear Japanese law will need to be applied, at a minimum, with respect to the settlement of Ito v. Onizuka and the applicability, if any, of Japan's Automobile Accident Compensation Law to the facts of this case.[7] See Declaration of Hioshi Nakane, Esq., Pars. 4-9. Because Japanese courts are more competent at interpreting and applying Japanese law, this factor weighs in favor of dismissal. Blanco, 997 F.2d at 988 (district court entitled to conclude that "questions of Venezuelan substantive and procedural law are better addressed by Venezuelan courts"). Accordingly, the public interest factors favor dismissal. Id.

IV. Conclusion

Because Japan is an adequate alternative forum and the public and private interest factors favor dismissal, Defendants' Motion is GRANTED.

IT IS SO ORDERED.

the Court has about Plaintiff's potential witnesses, the Court cannot find that Plaintiff will suffer undue prejudice by litigating this case in Japan.

fn6 While the parties have not given the Court any information about the docket congestion of the Tokyo District Court, this Court notes that it is widely and frequently acknowledged that the Central District of California is one of the busiest and most burdened federal courts in this country.

fn7A choice of law determination must be made before a case can be dismissed on forum non conveniens grounds if the case involves a United States statute requiring venue in the United States, such as the Jones Act or the Federal Employers' Liability Act. Lueck, 236 F.3d at 1148. However, because no statute requiring venue in the United States arguably applies in this case, "no potentially dispositive choice of law determination need [be] made." Id. (citing Lockman Foundation, 930 F.2d at 771).

RELEVANT PROVISIONS INVOLVED

CALIFORNIA INSURANCE CODE

§700. (a) A person shall not transact any class of insurance business in this state without first being admitted for that class. Admission is secured by procuring a certificate of authority from the commissioner. The certificate shall not be granted until the applicant conforms to the requirements of this code and of the laws of this state prerequisite to its issue.

§790. The purpose of this article is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, Seventy-ninth Congress), by defining, or providing for the determination of, all such practices in this State which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

§790.02. No person shall engage in this State in any trade practice which is defined in this article as, or determined pursuant to this article to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

§1861.13. Application. This article shall apply to all insurance on risks or on operations in this state, except those listed in Section 1851.

McCarran-Ferguson Act, 15 U.S.C. § 1011 - 1015.

§ 1011. Declaration of policy

(a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act [15 USCS §§ 1 et seq.], and the Act of October 15, 1914, as amended, known as the Clayton Act and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended [15 USCS §§ 41 et seq.], and the Act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this Act [15 USCS §§ 1011 et seq.] shall render the said Sherman Act [15 USCS §§ 1 et seq.] inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

§ 1014. Applicability of National Labor Relations Act [29 USCS §§ 151 et seq.] and the Fair Labor Standards Act of 1938

Nothing contained in this Act [15 USCS §§ 1011 et seq.] shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act [29 USCS §§ 151 et seq.], or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

§ 1015. Definition of "State"

As used in this Act [15 USCS §§ 1011 et seq.], the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, Guam, and the District of Columbia.